IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1467

UNITED STATES STEEL CORPORATION,
Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Respondents, United Mine Workers of America; District No. 4, United Mine Workers of America and United Mine Workers of America Local No. 6321 oppose the Petition for Writ of Certiorari and present arguments in opposition herein.

Counter Statement of the Issue

Can a union be held liable in money damages to an employer for the refusal of union members to cross a stranger picket line when the collective bargaining agreement between the union and the employer does not contain an express no-strike clause and the theory of liability contended for by the

employer throughout trial was a breach of a no-strike obligation implied from the agreement's grievance-arbitration clause?

Counter Statement of the Case

The statement of the case presented by Petitioner is accepted with the following supplements:

For purposes of completeness, the following paragraphs are quoted from pages 4-5 of U.S. Steel Corporation's (Appellee below) brief to the United States Court of Appeals for the Third Circuit:

> Beginning on Sunday evening, August 17, 1969, at approximately 11:00 p.m., individuals who were not employee-members of Defendant Local 6321 appeared at the entrance to Robena Mines Nos. 3 and 4 (Ap. 23a; Tr. 96).
>
> A member of Plaintiff's security force observed four men at the entrance to Robena 3 at approximately 11:00 p.m. One of the two cars parked at the entrance bore a sign stating "It could happen to you." These individuals identified themselves as miners from Consolidation Coal Company's Humphrey No. 7 Mine in West Virginia (Tr. 96, 125). These men spoke with employee-members of Defendants as they arrived for the midnight shift, but did not prevent them from entering the parking lot on Plaintiff's property (Tr. 97-98). Plaintiff's security force member observed no loud talk, menancing gestures or any physical contact between the pickets and Robena employees. The pickets made no attempt to enter Company property, and there were no reports of vandalism of employee cars in the lot (Tr. 98). The Robena No. 3 employees failed to work as scheduled (Tr. 98).
>
> At Robena 4, two pickets were observed at the entrance to the parking lot shortly after midnight Sunday;

> they had previously been seen at Robena 3 (Tr. 100, 113). Although employee-members of Defendants had reported for work prior to the appearance of the pickets, they did not work as scheduled (Tr. 100, 112). There were no reports of threats or violence at Robena No. 4 at approximately 12:20 a.m. (Tr. 102).
>
> At approximately 6:20 a.m. Monday, August 18, 1969, two pickets were observed at the entrance to the Robena preparation plant (Tr. 160). The 35 employees scheduled to work reported, but refused to work and left (Tr. 161). There were no reports of violence or vandalism (Tr. 161).
>
> At Robena 2, five pickets appeared at approximately 3:00 p.m. Monday afternoon (Tr. 124) and talked to Robena employees as they reported for work (Tr. 125). Thereafter, the Robena employees parked in the lot, entered the bathhouse, milled around, and then left (Tr. 125). None of the 100 employees scheduled to work reported any threats of violence or vandalism to representatives of Plaintiff (Tr. 126).
>
> At Robena 3, four pickets appeared in two cars at approximately 2:20 p.m. (Tr. 133). The pickets spoke to the approximately 125 Robena employees as they reported for the afternoon shift. Some of the employees drove past the pickets, parked in the lot and then left. None worked as scheduled (Tr. 134).
>
> . . . During this period, no one reported to Plaintiff any personal encounter with threats, violence, or vandalism (Tr. 103, 115, 119, 153-154, 156, 250, 316-317).
>
> The three union officers and six union committeemen scheduled to work during the period of this work stoppage did not report for work, and did not work throughout the strike, nor did they report off (Tr. 136-142, 354).

In its opinion, the District Court stated:

> It is undisputed that the work stoppage at Robena by members of Local 6321 was not related to any purely local disputes or grievance.
>
> Throughout the trial, USS contended that the employee's refusal to work was out of sympathy for the West Virginia miners' dispute whereas the UMW maintained that the work stoppage was induced by fear and threats of harm generated by the roving bands of stranger pickets.
>
> Petition, Appendix A, p. 3a

The Court of Appeals dealt with the question of the cause of the work stoppage as follows:

> We reject U.S. Steel's contention in this court that the work stoppage at the Robena mine was not a sympathy strike in support of the Humphrey employees, but rather was a dispute between the parties as to the safety conditions for work. *Buffalo Forge* has enabled U.S. Steel to find grist in the union's argument in the district court: what the employer characterized in the heat of the trial as a sympathy strike[9] it urges in this more temperate appellate climate to have been a safety dispute.[10] U.S. Steel's candor in acknowledging its earlier misconception of the essence of the controversy is admirable but unavailing. We must scrutinize the factual issues as they were submitted to the jury, not as they are portrayed in the light of recent legal developments. The district judge charged the jury that if the defendants' members stopped work in sympathy with the strike at the Humphrey mine, such conduct would violate the contract, but that if the defendants' members stopped work because of "good faith apprehension of physical danger due to abnormally dangerous conditions for work existing at their place of employment," such conduct would not violate the contract. Implicit in the jury's verdict for the plaintiff was

> the factual finding that the Robena work stoppage was a sympathy strike in support of the Humphrey employees and a rejection of the "safety" theory advanced by the union.
>
> On appeal from the granting or denial of a motion for judgment notwithstanding the verdict, we are bound to view the evidence in the light most favorable to the verdict winner and to give the party the benefit of all inferences that the evidence fairly supports. See, *e.g.*, Fireman's Fund Insurance Co. v. Videfreeze Corp., Nos. 75-2405-2406 (3rd Cir. Aug. 25, 1976), slip op. at 12; O'Neill v. Kiledjian, 511 F.2d 511, 513 (6th Cir. 1975); Cockrum v. Whitney, 479 F.2d 84, 85-86 (9th Cir. 1973); 5A J. Moore, Federal Practice ¶ 50.07, at 2356-57 (1975). The record adequately supports the jury's implied factural finding that the work stoppage at the Robena mine was a sympathy strike. We must therefore treat the Robena work stoppage as a sympathy strike, and determine whether that strike was arbitrable under the National Bituminous Coal Wage Agreement of 1968 and the principles established by Buffalo Forge.[11]

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[9] See, *e.g.* Transcript at 239-40:

Mr. McConomy [counsel for plaintiff]: . . . There is no question it was a sympathy strike.

[10] Appellee's Brief in Response to the Court's Request of July 30, 1976, concerning the Implications of Buffalo Forge at 5:

[T]he work stoppage arose over a dispute between the parties as to the safety of conditions for work, thereby establishing a clear breach of implied no-strike obligation of the labor agreement under the Supreme Court's decision in Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974).

[11] Consequently, we have no occasion to consider the applicability of *Gateway Coal* to a refusal by union members to cross a stranger picket line because the pickets have allegedly threatened violence. See note 10 *supra*.

Petition, Appendix B, pp. 20a-21a.

Argument and Reasons Why the Writ Should be Refused

Respondents respectfully submit that the Petition for Writ of Certiorari should not be granted because no valid reason for granting the writ exists.

The subject decision of the United States Court of Appeals for the Third Circuit is the first decision of a Court of Appeals applying this Court's ruling in *Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397 (1976) in the context of a suit for damages. Since the Third Circuit's decision, the Court of Appeals for the Sixth Circuit has ruled identically in a different factual context involving equitable relief. *Southern Ohio Coal Co. v. United Mine Workers*, ... F.2d ...., 94 LRRM 2609, No. 76-2031 (CA 6 Feb. 11, 1977). The Third Circuit's opinion has also been followed by the United States District Court for the Western District of Pennsylvania in *Republic Steel Corp. v. United Mine Workers*, ... F. Supp. ...., 94 LRRM 3192, C.A. No. 76-92 (W.D. Pa. March 21, 1977). Thus, those early decisions reported to date are fully consistent with the Third Circuit's decision. No Court of Appeals decisions are in conflict.

The primary thrust of Petitioner's application is that the Court of Appeals for the Third Circuit misread this Court's decision in *Buffalo Forge*. Specifically, Petitioner argues that when this Court ruled a promise not to engage in sympathy strikes could not be implied from the existence of an arbitration clause, it intended its ruling to apply only where the initial strike, which prompted the activity of the sympathy strikers, was a legal one. Petitioner grounds this argument on emphasis it adds to the final phrase of one sentence of the Court's opinion, to wit:

> Thus had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated *by the sympathy strike in this case.*
>
> 428 U.S. at 408 (emphasis added).

By emphasizing the last phrase of this sentence, Petitioner seeks to limit *Buffalo Forge* to its specific facts without regard for the Court's rationale and without regard for other portions of the Court's opinion.

Respondents respectfully submit that the Court of Appeals for the Third Circuit has properly applied the *Buffalo Forge* decision. In *Buffalo Forge*, this Court held that a district court may not, consistent with the Norris-LaGuardia Act, enjoin a sympathy strike, *i.e.*, a strike by a union not by reason of any dispute it or any of its members has with the employer but in support of other local unions that are on strike. The Court correctly reasoned that a sympathy strike is not *over* a dispute between the union and the employer that is subject to the arbitration provisions of its contract. Neither the causes nor the issues underlying such a strike are subject to the settlement procedures agreed to by the parties; and therefore such a strike cannot be said to have the effect of denying or evading an obligation to arbitrate. As the logical extension of this analysis, the Court concludes with the sentence relied on by Petitioners:

> Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case.
>
> 428 U.S. at 408.

Read in its entirety and in the light of the reasoned elaboration of the Court's rationale, it is clear that the emphasis added by Petitioner to the last phrase of this sentence is not justified. It is not the reason for the sympathy strike that is critical, but the fact that it is a sympathy strike. A strike, not over any dispute between the employees and their employer but in support of another union involved in a non-local dispute does not evade the contractual obligation to arbitrate regardless of the cause or character of the other union's actions.

The case at bar is an action for damages predicated on Section 301 of the Labor-Management Relations Act for a strike caused by the refusal of the members of the Defendant Robena local union to cross a picket line established at their mine by other members of the International Union. Until this Court's decision in *Buffalo Forge*, Petitioner maintained that it was entitled to damages because such a sympathy strike breached the no-strike obligation implied from the presence of a final and binding arbitration provision in the labor agreement. *Buffalo Forge* held that a promise to engage in sympathy strikes is not implied from an arbitration clause. The Court of Appeals noted that the contract before it did not contain an express no-strike clause, and correctly held that in the case before it, U.S. Steel had not demonstrated a breach of contract. Accordingly, the Court of Appeals granted judgment notwithstanding verdict.

The ruling of the Court of Appeals is correct. Indisputably the strike resulted from the refusal of employees to cross the picket line of non-employees established at their mine for reasons totally beyond the control of and foreign to the settlement of disputes procedure between the Robena miners and U.S. Steel. The strike had neither the effect of denying nor

evading an obligation to arbitrate. It was not a breach of any duty owed under the labor agreement's settlement of disputes procedure.

As discussed above, Petitioner's primary argument that the Court's opinion limited its *Buffalo Forge* holding to the precise facts of that case is without foundation. In support of that argument, however, Petitioner cites several factors by which it seeks to distinguish the case at bar from *Buffalo Forge*. Foremost, among these factors is that the foreign dispute over which the Robena sympathy strike was illegal. Also raised are the facts that the labor agreement involved here is a common one as between the Robena and Humphrey Mines and that it contains a broad arbitration provision.

The distinctions proposed by Petitioner are superficial at best and have already been rejected by this Court and others. It is true that both the Robena and Humphrey locals worked under the same labor agreement since it was the product of bargaining with a multi-employer association. However, the duties of each local under that agreement run exclusively to its own employer. Robena miners were obligated to arbitrate disputes only with U.S. Steel. their employer. Under the terms of the agreement, it could not arbitrate disputes with the owners of the Humphrey mine. Nor would an arbitration decision at the Humphrey mine be binding on or of any consequence at the Robena Mine. On examination, the commonality of interest asserted by Petitioner is not unlike the commonality of interest of the various Steelworkers locals involved in *Buffalo Forge* which would have identical or similar contract clauses in their labor agreements. As the Court of Appeals stated:

> We think it sufficient to dispose of U.S. Steel's contention by observing that the Robena strike was not over

> any dispute "between the Union and the employer"—between UMW and U.S. Steel—that was subject to arbitration. *Buffalo Forge, supra*, ...
>
> Petition, Appendix B p. 23a

Nor is the characterization of the initial strike as legal or illegal of any consequence. If the picket line causing the sympathy strike or that strike itself is in violation of the National Labor Relations Act, the Employer is free to utilize any and all remedies provided by law to cure such violations. In the context of a suit for damages for breach of contract under §301 however, this distinction is irrelevant. *Island Creek Coal Co. v. UMW*, 507 F.2d 650, fn 3 at 652, (3rd Cir. 1975) citing *AFL v. Swing*, 312 U.S. 321 (1940).

The breadth of the grievance procedure in this case is not a significant distinction. The grievance procedure in *Buffalo Forge* was a broad one. It applied to "any trouble of any kind [arising] in the plant." Nor does the integrity clause of the subject contract add a relevant distinction. This clause reiterates the obligation undertaken elsewhere in the agreement to resolve disputes not settled by agreement through arbitration. It does not broaden the scope of the grievance procedure, it merely restates it. And like the arbitration clause itself, it supplies no possible basis for implying from its existence a promise not to strike which could have been violated by the sympathy strike in this case.

The distinctions raised by Petitioner are predicated on the character of the initial stoppage and on the contract involved. As demonstrated above, these are distinctions without a difference. Yet nothing more really need be said than to note that *in the Buffalo Forge decision itself, this Court unanimously underscored the applicability of that decision to the contract and facts in this case*. At footnote 10 to the majority opinion, Mr. Justice White stated:

> To the extent that the Court of Appeals 517 F.2d at 1211, and other courts, Island Creek Coal Co. v. United Mine Workers, 507 F.2d 650, 653-654, (CA3), cert. denied, 423 U.S. 877 (1975); Armco Steel Corp. v. United Mine Workers, 505 F.2d 1129, 1132-1133 (CA4 1974), cert. denied 423 U.S. 877 (1975); Amstar Corp. v. Amalgamated Meat Cutters, 468 F.2d 1372, 1373 (CA5 1972); Inland Steel Co. v. Local Unions Nos. 1545, UMW, 505 F.2d 293, 299-300 (CA7 1974) have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong.
>
> 428 U.S. at 408-9

This comment was concurred in by the dissent when, at footnote 17 to its opinion, Mr. Justice Stevens stated:

> In particular, an implied no-strike clause does not extend to sympathy strikes. See ante, at 10 and n.10.
>
> 428 U.S. at 425

The labor agreement involved in the *Island Creek*, *Armco Steel*, and *Inland Steel* cases cited above was the 1971 edition of the contract involved in this case. The grievance procedure and integrity clauses of those contracts are identical in all relevant particulars to the 1968 edition involved in this case. Similarly each case involved a sympathy strike caused by the presence of stranger pickets. Thus this Court has unaminously indicated that its holding in *Buffalo Forge* is applicable to the circumstances and contract at bar.

Conclusion

The Petition for Writ of Certiorari filed in this case should be denied. Petitioner has failed to demonstrate any reason why the Petition should be granted. The decision of the Court of Appeals for the Third Circuit is the first decision of a Court of Appeals applying this Court's holding in *Buffalo Forge* in the context of a suit for damages. It is not in conflict with the decision of any other Court of Appeals. It is fully consistent with the decision of this Court in *Buffalo Forge Co. v. United Steelworkers, supra* and as such, it, like *Buffalo Forge* itself, is consistent with the decisions of this Court in *Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235 (1970), *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1962) and *Gateway Coal Co. v. UMW*, 414 U.S. 368 (1974). For this reason, Respondents respectfully submit the petition should be denied.

Respectfully submitted,

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